

DOCKET NO.: 1026-037/MMM 160226.1
Application No.: 09/862,728
Office Action Dated: December 14, 2004

PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116

REMARKS

Claims 1-4, 7-12, 15-19, 21-23, and 26-27 are pending. In the light of the Final Office Action dated December 14, 2004 ("Office Action"), claim 27 is withdrawn. Claims 1-4, 7-12, 15-19, 21-23 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent no. 5,825,943 ("DeVito") in view of Gary K. Starkweather, "PEDISTAL, A Personal Document Imaging System" ("Starkweather").

Applicant respectfully submits that Starkweather is not available as prior art under 35 U.S.C. § 102. Starkweather was published in October 2000 and was written by Applicant, Gary K. Starkweather. Therefore, Starkweather is not prior art under 35 U.S.C. § 102(a) because "Applicant's disclosure of his or her own work within a year before the application filing date cannot be used against him or her under 35 U.S.C. § 102(a)." MPEP 2132.01. Starkweather is not prior art under 35 U.S.C. § 102(b) because it was not published more than one year prior to the date of the subject application. Starkweather is not prior art under 35 U.S.C. § 102(e) because it is not an application for patent or a patent.

Because Starkweather is not prior art under 35 U.S.C. § 102, Applicant submits that it is not a basis for a rejection under 35 U.S.C. 103(a). In view of the fact that the Office Action indicates that the present invention is patentably distinct over DeVito, Applicant respectfully requests withdrawal of the final rejection and issuance of a Notice of Allowance for claims 1-4, 7-12, 15-19, 21-23 and 26.

Respectfully submitted,

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